

The opinion in support of the decision being entered today was not written  
for publication and is not binding precedent of the Board.

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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Ex parte OLIVER HECKER and STEFFEN RITZ

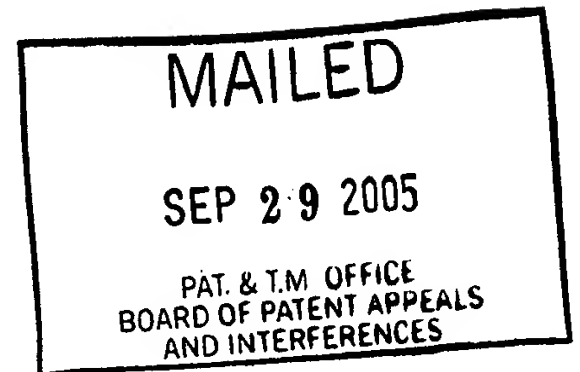
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Appeal No. 2005-2721  
Application No. 09/530,156

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ON BRIEF

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Before FRANKFORT, McQUADE, and BAHR, Administrative Patent Judges.  
FRANKFORT, Administrative Patent Judge.

REMAND TO THE EXAMINER

This application is remanded to the examiner under the authority provided us by 37  
CFR § 41.50(a) and MPEP § 1211 for action in accordance with the following  
comments.

More particularly, the above identified application is being remanded to the  
examiner for the second time for appropriate action on or consideration of appellants'  
reply brief filed on May 11, 2004 in response to the examiner's answer mailed March  
11, 2004. As we noted in the paragraph bridging pages 1 and 2 of our earlier remand

(March 17, 2005) it appears from the Image File Wrapper (IFW) that the examiner was unaware of the filing of the reply brief when this application was originally forwarded to the Board of Patent Appeals and Interferences. See also the notification filed by appellants on January 25, 2005.

However, in response to the earlier remand the examiner merely sent out (on April 7, 2005) a notification of defective brief requiring correction of the Appendix of Claims, which was missing claim 10 on appeal. No comment was made in that paper concerning the status of the reply brief filed May 11, 2004. Appellants filed an "Amended Brief" (April 22, 2005) correcting the deficiency in the Appendix of Claims. The examiner then sent out a notification (July 13, 2005) indicating that the "reply brief [sic] filed 4/22/05 has been entered and considered."

Thus, the record still remains unclear as to the status of the reply brief filed May 11, 2004. Clarification of this issue by the examiner is required. Moreover, if the reply brief is entered and considered, we require that the examiner provide us with a written response to the arguments therein, so that a full consideration of the rejection on appeal (i.e., of claims 1, 10 and 17 through 19 under 35 U.S.C. § 102(e) based on Nakanishi et al. (U.S. Patent No. 6,027,182)) may be completed.

REMANDED TO THE EXAMINER

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Rader, Fishman & Grauer PLLC  
39533 Woodward Avenue  
Suite 140  
Bloomfield Hills, MI 48304-0610